



Citation: *BF v Minister of Employment and Social Development*, 2022 SST 1187

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: B. F.

Respondent: Minister of Employment and Social Development
Representative: Kristopher Dolenuk

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 6, 2021 (issued by
Service Canada)

Tribunal member: James Beaton

Type of hearing: Teleconference

Hearing date: November 16, 2022

Hearing participants: Appellant
Appellant's witness
Respondent's representative

Decision date: November 17, 2022

File number: GP-21-1682

Decision

[1] The appeal is allowed.

[2] The Appellant, B. F., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of March 2021. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 53 years old. She last worked as an assistant manager at a retail clothing store. She stopped working in July 2021 due to psoriatic arthritis, diabetes, anxiety, and depression.

[4] The Appellant applied for a CPP disability pension on January 6, 2021. The Minister of Employment and Social Development (Minister) refused her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Minister says:

- the medical evidence doesn't support a severe disability
- there are treatments left for the Appellant to try
- the Appellant hasn't reached maximum recovery
- the Appellant hasn't tried any other jobs¹

[6] The Appellant says:

- her doctors agree that she has a severe disability
- she has tried multiple treatments
- her arthritis will only get worse with time
- she hasn't tried any other jobs because she doesn't have work capacity²

¹ The Minister's written submissions are at GD6-2 to 7.

² The Appellant's written submissions are at GD1-4 and 13.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by the hearing date, which was November 16, 2022.³

[8] The *Canada Pension Plan* defines “severe” and “prolonged.”

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.⁴

[10] This means I must look at all of the Appellant’s medical conditions together to see what effect they have on her ability to work. I must also look at her background (including her age, level of education, language abilities, and past work and life experience). This is so I can get a realistic or “real world” picture of whether her disability is severe. If the Appellant is regularly able to do some kind of work that she could earn a living from, then she isn’t entitled to a disability pension.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁵

[12] This means the Appellant’s disability can’t have an expected recovery date. The disability must be expected to keep the Appellant out of the workforce for a long time.

[13] The Appellant must prove she has a severe and prolonged disability. She must prove this on a balance of probabilities. This means she must show that it is more likely than not she is disabled.

³ Service Canada uses an appellant’s years of CPP contributions to calculate their coverage period, or “minimum qualifying period” (MQP). The end of the coverage period is called the MQP date. See section 44(2) of the *Canada Pension Plan*. The Appellant’s CPP contributions are at GD9-7. In this case, the Appellant’s coverage period ends on December 31, 2023, after the hearing date, so I must decide whether she was disabled by the hearing date.

⁴ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

⁵ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Reasons for my decision

[14] I find that the Appellant had a severe and prolonged disability as of November 2020. I reached this decision by considering the following issues:

- Was the Appellant's disability severe?
- Was the Appellant's disability prolonged?

Was the Appellant's disability severe?

[15] The Appellant's disability was severe by November 16, 2022. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations affected her ability to work

[16] The Appellant has:

- psoriatic arthritis
- diabetes
- anxiety and depression

[17] However, I can't focus on the Appellant's diagnoses.⁶ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living by November 16, 2022.⁷ When I do this, I must look at **all** of the Appellant's medical conditions (not just the main one) and think about how they affected her ability to work.⁸

[18] I find that the Appellant had functional limitations by November 16, 2022.

– What the Appellant says about her functional limitations

[19] The Appellant says her medical conditions have resulted in functional limitations that affected her ability to work by November 16, 2022.⁹

⁶ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁷ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁸ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

⁹ What the Appellant says about her functional limitations can be found on the hearing recording and at GD2-20 to 29 and GD3-21.

[20] As a result of **psoriatic arthritis** in her hands, wrists, feet, ankles, shoulders, and hips, she says:

- all of her physical abilities are limited (for example, she has trouble carrying groceries, climbing stairs and ladders, opening jars and doors, kneeling, bending, reaching overhead, pushing, and pulling)
- she can't sit for more than 10 minutes
- she can't stand for more than 20 minutes
- she can't walk or do housework for more than 30 minutes
- she wears a knee brace when she walks her dog
- she can't type for long due to wrist pain
- she can't write by hand for more than 10 minutes
- she gave up hobbies (hiking, tennis, and badminton)
- she bought a vehicle that is higher off the ground so she can get in and out more easily
- she can't sleep due to pain, so she is exhausted during the day

[21] She provided a letter (dated 2021) from her work supervisor, Ms. M., who wrote that she had observed the Appellant struggling at work over the past two years. Ms. M. could tell that the Appellant was in pain. The Appellant could no longer climb ladders. She had trouble opening boxes, and she walked with a limp.¹⁰

[22] The Appellant says **diabetes** contributes to her low energy levels during the day, while **depression** contributes to her low mood. She says she gets anxious about going to the doctor. She testified that **anxiety** impacts her ability to work, but she didn't clearly explain how.

¹⁰ See GD3-2.

– **What the medical evidence says about the Appellant’s functional limitations**

[23] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by November 16, 2022.¹¹

[24] The medical evidence supports what the Appellant says. Notes from her family doctor (Dr. Arham) and her rheumatologist (Dr. Gill) show that she reported morning stiffness as well as high pain levels throughout her body, which resulted in poor sleep and difficulty doing daily tasks. Dr. Gill observed the Appellant to be tender in areas, with patches of psoriasis and swollen wrists and knuckles. He diagnosed her with osteoarthritis in her hands. He didn’t specifically diagnosis her with arthritis in other areas, but he appears to have accepted what she told him about her pain and limitations.¹²

[25] Dr. Arham diagnosed the Appellant with moderate depression, mild anxiety, and poorly controlled diabetes. In September 2021, he recommended that she go on long-term disability due to multiple medical conditions.¹³

[26] The Minister says the medical evidence doesn’t support a severe disability because Dr. Gill didn’t list specific functional limitations in his report, and x-rays showed only mild degenerative changes in the Appellant’s hands and feet.

[27] I disagree with the Minister.

[28] It isn’t necessary for the medical evidence to specifically list every functional limitation.¹⁴ And even though the x-rays showed only mild degenerative changes, Dr. Gill continued to treat the Appellant for arthritis until at least July 2020.¹⁵

¹¹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹² See GD2-54 to 56, 66 to 69, 72, and 73; and GD3-12 and 13.

¹³ See GD3-6 and 8 to 11.

¹⁴ See, for example, the Appeal Division’s decision in *NH v Minister (Employment and Social Development)*, AD-22-109 at paragraph 47.

¹⁵ The x-ray results are at GD2-53. Dr. Gill’s latest notes are at GD2-72 and 73.

[29] I must consider the evidence as a whole, including the Appellant's testimony. In this case, the medical evidence is consistent with what the Appellant says about her medical conditions and how they impact her.

[30] The medical evidence supports that the Appellant's functional limitations prevented her from doing her job as the assistant manager of a retail clothing store by November 16, 2022. Ms. M.'s letter describes specific tasks that the Appellant struggled with at work, such as climbing ladders and opening boxes. The Appellant persevered through her four- or five-hour shifts until July 2021. But the pain made it difficult for her to be on her feet for so long. She got tired after only a couple hours of work. Eventually, she could no longer work at all.¹⁶

[31] Although her diabetes, anxiety, and depression aren't documented in the medical evidence until 2021, I believe that the Appellant's arthritis and resultant poor sleep on their own make her severely disabled.

[32] Next, I will look at whether the Appellant has followed medical advice.

– **The Appellant has followed medical advice**

[33] To receive a disability pension, an appellant must follow medical advice.¹⁷ The Minister says that there are still treatments left for the Appellant to try, specifically for diabetes and her mental health. However, the Minister doesn't dispute that the Appellant has followed the medical advice that was given to her.

[34] The Appellant can't take certain medications for arthritis because she has a fatty liver, but she takes Advil.¹⁸ She tried CBD oil, but it didn't help. She gets two injections every month for arthritis pain, which keeps her pain at around a 4 or 5 out of 10 on average.¹⁹

¹⁶ See GD2-54 to 56, GD3-10, and the hearing recording.

¹⁷ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁸ Diagnostic imaging of the Appellant's liver is at GD2-59, 60, and 65. Dr. Gill said that this meant she could not take some disease-modifying antirheumatic drugs, or DMARDs (GD2-66, 67, 72, and 73).

¹⁹ The Appellant said this at the hearing.

[35] She tried melatonin and over-the-counter medications for insomnia, but they had side-effects.²⁰ The Minister's representative asked the Appellant if she had discussed prescription sleep aids with her doctor. The Appellant had not. However, the Minister's representative didn't argue that this amounted to a failure to mitigate her insomnia or to follow medical advice.

[36] For diabetes, the Appellant takes Metformin. She exercises by walking her dog and swimming, although this hasn't resulted in much weight loss. She is working with a diabetes specialist to follow an appropriate diet.²¹

[37] She can't afford counselling for anxiety. Instead, she takes CipraleX, which has reduced her symptoms.²² She tried yoga but didn't feel that it made a difference.²³

[38] I now have to decide whether the Appellant can regularly do other types of work. To be severe, the Appellant's functional limitations must prevent her from earning a living at any type of work, not just her usual job.²⁴

– **The Appellant can't work in the real world**

[39] When I am deciding whether the Appellant can work, I can't just look at her medical conditions and how they affect what she can do. I must also consider factors such as her:

- age
- level of education
- language abilities
- past work and life experience

²⁰ The Appellant said this at the hearing.

²¹ Dr. Gill recommended that the Appellant lose weight (GD2-68 and 69). I believe she has made reasonable efforts to do so through her exercise regime and diet.

²² See GD3-8.

²³ The Appellant said this at the hearing.

²⁴ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

[40] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say she can work.²⁵

[41] I find that the Appellant can't work in the real world. She was unable to work as of November 16, 2022.

[42] Her education, language abilities, and experience are positive factors. She has a basic education (Grade 12) and is fluent in English. She used to live in the United Kingdom, but all of her work experience is in Canada. This includes working in retail clothing stores from about 2011 to July 2021. Before that, she worked in an electrical retail store for one to two years.²⁶ I don't consider her age (53) to be a positive or a negative factor; she is still 12 years short of the standard retirement age.

[43] Ultimately, the Appellant's functional limitations outweigh these factors and make any type of work or retraining impossible. Her demonstrated inability to do light manual labour in a retail setting shows that she can't do manual labour. And she has no office experience.

[44] In theory, the Appellant has the ability to retrain for office work. She described her computer skills as "average." However, when I asked her if she could use a word processing program, she said no. Therefore, I find that her computer skills are most likely below what would be required for most office jobs and training programs. She would first need to update her computer skills.

[45] I don't think the Appellant can update her computer skills or do office work on a predictable basis. The arthritis in her hands means she can't type (or write by hand) for very long. She can't sit for more than 10 minutes either. Ergonomic equipment and the freedom to change positions aren't enough to allow the Appellant to work **predictably** because her pain varies from day to day.²⁷

²⁵ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²⁶ See the Appellant's application (GD2-20 to 29) and the hearing recording.

²⁷ See the hearing recording. An appellant who can't work predictably can't work regularly, according to the Federal Court of Appeal in *Atkinson v Canada (Attorney General)*, 2014 FCA 187.

[46] Fatigue is another barrier to substantially gainful work. Before she stopped working, the Appellant reported being tired after only two hours of work.²⁸ She can't earn a substantially gainful income from two hours of work per day unless she earns about \$34 per hour, which is unlikely given her lack of relevant experience.²⁹

[47] I find that the Appellant's disability was severe as of November 2020. Although she continued working until July 2021, that work wasn't substantially gainful.³⁰ I accept her testimony that she worked as much as she could, and that November 2020 is when she believes her medical conditions kept her from being able to work more.

Was the Appellant's disability prolonged?

[48] The Appellant's disability was prolonged by November 16, 2022.

[49] The Appellant's arthritis symptoms appeared in 2019, followed by poor sleep in August 2020. These conditions have continued since then, and they will more than likely continue indefinitely.³¹ Although Dr. Arham wrote that the Appellant had been sleeping and her anxiety was better on September 2, 2021, the next day he recommended that she go on long-term disability.³² I have no evidence from Dr. Arham after September 3. The evidence that I do have suggests that the Appellant might have been experiencing a temporary improvement in her symptoms, but not a lasting improvement.

[50] There is no cure for arthritis. Dr. Gill and Dr. Arham have had a few years to optimize her treatment. If the Appellant can lose weight and see a specialist, she might improve her liver condition enough to be able to take disease-modifying antirheumatic

²⁸ See GD3-10.

²⁹ Section 68.1 of the *Canada Pension Plan Regulations* defines a substantially gainful income. For 2022, this was \$17,577.96.

³⁰ The Appellant's earnings from January to July 2021 were \$8,352. At that rate, she would earn \$16,704 for the year. This is less than a substantially gainful income for that year, which was \$16,963.92. See section 68.1 of the *Canada Pension Plan Regulations*.

³¹ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an appellant must show a severe and prolonged disability by the end of their MQP and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

³² See GD3-6 and 8.

drugs (DMARDs).³³ However, at this point it is speculative to say if or when that will occur, or whether DMARDs will improve her arthritis enough for her to be able to work.

[51] I find that the Appellant's disability was prolonged as of November 2020. She hasn't been regularly able to do substantially gainful work since then as a result of her arthritis and poor sleep.

When payments start

[52] The Appellant's disability became severe and prolonged in November 2020.

[53] There is a four-month waiting period before payments start.³⁴ This means payments start as of March 2021.

Conclusion

[54] I find that the Appellant is eligible for a CPP disability pension because her disability was severe and prolonged by November 16, 2022.

[55] This means the appeal is allowed.

James Beaton
Member, General Division – Income Security Section

³³ See GD2-66, 67, 72, and 73. The Appellant testified that she might see a specialist in the future regarding her fatty liver.

³⁴ Section 69 of the *Canada Pension Plan* sets out this rule.